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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JULY 24, 2002

APPLICATION OF

UAE MECKLENBURG COGENERATION, LP

CASE NO. PUE-2002-00313

For a Certificate of Public Convenience and
Necessity Pursuant to Va. Code § 56-580 D.

ORDER FOR NOTICE AND COMMENT

On May 28, 2002, UAE Mecklenburg Cogeneration LP (“UAE Mecklenburg” or “Company”) filed with the State Corporation Commission (“Commission”) a Petition and Application (“May 28, 2002, Filing”) requesting that the Commission declare that its facility located near Clarksville, in Mecklenburg County, Virginia (“Facility”) may cease operation as a qualifying cogeneration facility (“QF”) under the federal Public Utilities Regulatory Policies Act (“PURPA”)¹ and commence operation as a non-qualifying electric generating facility without obtaining a certificate of public convenience and necessity (“CPCN”) or other approvals from the Commission. In the alternative, UAE Mecklenburg also proposed in its May 28, 2002, Filing that if the Commission found that a certificate or other approvals are needed, the Company’s filing be treated as an application for a CPCN or for such other approvals as may be required.

Thereafter, on July 3, 2002, UAE Mecklenburg filed an application for a CPCN (“Application”) pursuant to Va. Code § 56-580 D to operate its Facility as a merchant plant. The Company further requested therein that the Commission consider the new Application as replacing the Company’s May 28, 2002, Filing in its entirety. In the alternative, the Company asked that the Commission treat its Application as an amendment to the May 28, 2002, Filing.

¹ 16 U.S.C. § 2601 et seq.

UAE Mecklenburg states in its Application that it is applying for a certificate pursuant to 5 VAC 5-20-80 A of the Commission's Rules of Practice and Procedure and to the extent applicable, the merchant plant rules, 20 VAC 5-302-10 et seq. According to the Application, UAE Mecklenburg owns and operates the Facility and is a limited partnership owned by one general partner, Mecklenburg Cogenco, Inc. and one limited partner, Cogeneration Capital Corp., both of which are wholly-owned subsidiaries of United American Energy Corp. ("UAE"). UAE is a privately-held energy company that owns or controls 722 MW of generating capacity. The Application also indicates that the Facility has operated as a QF pursuant to PURPA since November 1992, and that the Federal Energy Regulatory Commission ("FERC") has determined UAE Mecklenburg to be an exempt wholesale generator ("EWG") under the federal Public Utility Holding Company Act.² The Company indicates that on May 24, 2002, UAE Mecklenburg filed with the FERC a request for blanket, market-based pricing authority pursuant to § 205 of the Federal Power Act.

The Facility is a 132 MW (net) topping-cycle pulverized coal cogeneration facility consisting of two power generation units. According to the Application, UAE Mecklenburg has obtained and maintains all necessary local zoning approvals and environmental permits. The Application states that UAE Mecklenburg is one of the cleanest coal-fired plants in the Commonwealth, utilizing state-of-the-art emission controls on each of its units. According to the Company, the Facility is interconnected to the system of Virginia Electric and Power Company ("Virginia Power") at the Buggs Island non-utility generator substation. The Application also states that Dominion Virginia Power conducted an electric transmission interconnection study in May 1991. That study concluded that no additional system modifications or line reconductoring

² 15 U.S.C. § 79a et seq.

were required to support the interconnection. UAE Mecklenburg currently sells all of the electric capacity and energy from the Facility exclusively to Virginia Power pursuant to a Power Purchase and Operating Agreement (“PPA”) effective as of January 17, 1989. The PPA has an initial 25 year term, which may be extended for periods of up to five years each. According to the Application, the PPA recognizes that UAE Mecklenburg may operate the Facility as a QF or a non-QF.

The Company requests in its Application that the Commission issue an order granting UAE Mecklenburg (i) a certificate to operate the Facility, (ii) with respect to information not furnished in the Company’s Application and supporting documents, a waiver of filing requirements therefor pursuant to 20 VAC 5-302-40, and (iii) such other authority, approvals and relief as may be deemed proper under the circumstances.

In support of its Application for a CPCN, the Company represents, among other things, that the Facility has been fully operational for more than nine years. The Application further states that the Facility has promoted and will continue to promote the public interest by (i) enhancing electric service reliability, (ii) adding to the diversity of energy sources within the Commonwealth, (iii) providing economic benefits to the Commonwealth of Virginia and Mecklenburg County, (iv) enhancing the competitive market for wholesale electricity, and (v) providing wholesale electricity and generating capacity needed by Dominion Virginia Power to serve its retail customers.

The Company further indicates in its Application that its steam host, Burlington Industries, Inc. (“Burlington”), has filed for bankruptcy protection and that it is anticipated that Burlington will close its facility in Clarksville by the end of the third quarter of 2002. The Company states that it has proposed developing a water distillation plant to maintain its QF

status, but would prefer to avoid the significant expenditures and commitments associated with that plant, which the Company states will not be needed if the Commission issues a certificate to the Facility. Thus, the Company states that the public interest will be served if the Commission considers this Application on an expedited basis, and without the necessity of a public hearing.

NOW the Commission, in consideration of the foregoing, is of the opinion and finds that UAE Mecklenburg's request to have its July 3, 2002, Application replace its May 28, 2002, Petition and Application in its entirety should be granted. Accordingly, the Company's May 28, 2002, filing is no longer before the Commission for consideration.

The issue of Virginia-based QFs desiring to convert to non-QF status and its implications for certification by this Commission is one of recent origin. As the Company's Application points out, Birchwood Power Partners, L.P., ("Birchwood") which owns a QF electric generating facility in King George County, Virginia, filed with Commission a petition and application earlier this year,³ asking the Commission to decide whether Birchwood could cease operating as a QF and begin operating as a merchant plant without having to obtain CPCN from the Commission. In the alternative, Birchwood requested that if the Commission found that a certificate was needed, that it treat its filing as an application for a CPCN.

Birchwood, the Commission Staff, and the Virginia Independent Power Producers filed extensive pleadings addressing this Commission's authority under Va. Code § 56-580 D, as well as the extent of FERC's authority under PURPA and other relevant statutes. Birchwood filed a motion to withdraw its petition and application on May 2, 2002 (citing its desire to remain in operation as a QF, indefinitely), and we, by Order dated June 25, 2002, granted that motion without prejudice, and without addressing the specific issues raised by Birchwood's filing.

³ Petition of Birchwood Power Partners, L.P., Case No. PUE010719. A procedural order concerning this case was issued by the Commission on February 19, 2002.

In the July 3, 2002, Application now before the Commission, UAE Mecklenburg similarly withdrew its request for a declaratory ruling by this Commission with regard to the specific issue of its authority to issue a CPCN to a QF facility that wishes to operate as a non-QF merchant plant. UAE Mecklenburg has filed an Application including information required by the merchant plant rules, and requests that this Commission issue the plant a certificate pursuant to our authority under Va. Code § 56-580 D.

In summary, the Company has represented that its QF status expires at the end of this year unless it retrofits its Facility to maintain its QF status. The Company has indicated that it would like to avoid that expense. Thus, UAE Mecklenburg requests that its application be addressed by this Commission on an expedited basis, and without a hearing.

By this Order, we will provide interested parties notice and an opportunity to file comments and to request a hearing concerning the Company's application for certification under § 56-580 D.⁴

Accordingly, IT IS ORDERED THAT:

- (1) This matter is docketed as Case No. PUE-2002-00313 and that all associated papers be filed therein.
- (2) On or before August 30, 2002, the Commission Staff and any interested persons may file written comments on the Application with the Clerk of the Commission, by filing such comments with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Comments shall refer to Case No. PUE-2002-00313. Contemporaneous

⁴ Parties filing such comments, may also address (i) the issue of the Commission's authority to issue such certification in this case (the issue raised in the Birchwood docket, discussed above), and (ii) the Commission's discharge of its review obligations in this matter pursuant to § 56-46.1, as required under § 56-580 D.

with filing any such comments, interested persons may also request that the Commission convene a hearing concerning the Company's Application. Copies of any such comments or requests for hearing filed shall also be served on the Company's counsel, Robert F. Riley, Esquire, Williams Mullen Clark & Dobbins, 1666 K Street, N.W., Suite 1200, Washington, D.C. 20006.

- (3) On or before September 9, 2002, the Company may file its response to the comments filed.
- (4) Forthwith upon receipt of this Order and thereafter, the Company shall make available copies of its application and other materials to members of the public who may obtain them, at no charge, by making a request in writing for the same to counsel for the Company, Robert F. Riley, Esquire, Williams Mullen Clark & Dobbins, 1666 K Street, N.W., Suite 1200, Washington, D.C. 20006.
- (5) On or before August 6, 2002, the Company shall publish twice as display advertising (not classified) in a newspaper or newspapers of general circulation in Mecklenburg County the following notice:

NOTICE TO THE PUBLIC OF AN APPLICATION BY
UAE MECKLENBURG, LP
FOR AN APPLICATION FOR
CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY PURSUANT TO VA. CODE § 56-580
CASE NO. PUE-2002-00313

On July 3, 2002, UAE Mecklenburg filed an application for a certificate of public convenience and necessity pursuant to Va. Code § 56-580 D ("Application") to operate under state certification its electric generation facility located in Clarksville, Mecklenburg County, Virginia, ("Facility"), which has been operating since 1992 as a qualifying facility ("QF") in accordance with the provisions of the federal Public Utility Regulatory Policies Act.

The Facility is a 132 MW pulverized coal cogeneration facility consisting of two power generation units. The Facility is interconnected to the system of Virginia Electric and Power Company ("Dominion Virginia Power") at the Buggs Island non-utility generator substation. UAE Mecklenburg currently sells all of the electric capacity and energy from the Facility exclusively to Virginia Power pursuant to a Power Purchase and Operating Agreement effective as of January 17, 1989. The PPA has an initial 25 year term, which may be extended for periods of up to five years each. According to the Application, the PPA recognizes that UAE Mecklenburg may operate the Facility as a QF or a non-QF.

The Company requests in its Application that the Commission issue an order granting UAE Mecklenburg a certificate to operate the Facility as a non-QF under certification issued by the Commission. In support of its Application the Company represents, among other things, that the Facility has been fully operational for more than nine years. The Application states that the Facility has promoted and will continue to promote the public interest by (i) enhancing electric service reliability; (ii) adding to the diversity of energy sources within the Commonwealth; (iii) providing economic benefits to the Commonwealth of Virginia and Mecklenburg County (iv) enhancing the competitive market for wholesale electricity; and (v) providing wholesale electricity and generating capacity needed by Dominion Virginia Power to serve its retail customers.

In addition, the Company indicates in its Application that its steam host, Burlington Industries, Inc. ("Burlington") has filed for bankruptcy protection and that it is anticipated that Burlington will close its facility in Clarksville by the end of the third quarter of 2002. The Company further states that it has proposed developing a water distillation plant to maintain its QF status beyond the end of the year, but would prefer to avoid the significant expenditures and commitments associated with that plant, which will not be needed if the Commission issues a certificate to the Company for the Facility.

A copy of the Application and other materials may be obtained, at no charge, by making a request in writing to counsel for the Company, Robert F. Riley, Esquire, Williams Mullen Clark & Dobbins, 1666 K Street, N.W., Suite 1200, Washington, D.C. 20006. The application and other materials may be inspected in the Commission's Document Control Center, Office of the Clerk of

the Commission, First Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia, during Commission business hours.

On or before August 30, 2002, interested persons may file written comments on the Application with the Clerk of the Commission, by filing such comments with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Contemporaneous with filing any such comments, interested persons may also request that the Commission convene a hearing concerning the Company's Application. All such comments shall refer to Case No. PUE-2002-00313. Copies of any comments and requests for hearing filed shall also be served on the Company's counsel, Robert F. Riley, Esquire, Williams Mullen Clark & Dobbins, 1666 K Street, N.W., Suite 1200, Washington, D.C. 20006.

A copy of the Order for Notice and Comment in this matter may be obtained from the Clerk of the Commission. The unofficial text of the Order may be viewed at the Commission's website: <http://www.state.us/scc/caseinfo/orders.htm>. The Rules of Practice and Procedure and other information may also be viewed on the website.

UAE MECKLENBURG COGENERATION, LP

- (6) On or before August 6, 2002, the Company shall serve a copy of this Order on the chairman of the board of supervisors of Mecklenburg County. Service shall be made by first-class mail or delivery to the customary place of business or residence of the person served.
- (7) On or before August 23, 2002, the Company shall file with the Clerk proof of the newspaper publication and proof of service required by ordering paragraphs (5) and (6).